sumed to know the law, the right to the reward follows upon compliance with the conditions of the statute. This argument might seem more reasonable if the statute itself gave the reward; but the statute only gives the Governor authority to offer the reward, and fixes the maximum amount which he may offer. Why there should be any more freedom from the contractual relation in the case of a special statute than in the case of a general statute authorizing rewards does not appear. The opposite conclusion to the decision in the instant case was reached in *Couch* v. *State,* 14 N. D. 361, under a statute which gave the governor authority in general to offer rewards. The weight of authority in this country upon the general question of whether recovery may be had where the party seeking the reward had no knowledge of the same before performing the service, is against such recovery. See note in 9 L. R. A. (N. S.) 1057; 34 Cyc., pp. 1751-2. The reasoning of the cases taking the opposite view is that the State receives the benefit from the service performed whether the person knew of the offer or not. *Auditor* v. *Ballard,* 9 Bush (Ky.) 572, 15 Am. Rep. 728. Or, as held in *Drummond* v. *United States,* 35 Ct. Cl. 356, "the motives of the person claiming the reward cannot be inquired into." Since it is a question of statutory construction, where a statute is involved as it is in the instant case, either of the reasons just noted would seem quite as sound as the one followed in the case under consideration. The reasoning of the courts holding with the weight of authority is that the relation between the parties is a contractual one, and should be governed by the rules relating to contracts. The decision on the other point in the case is also of interest, in that the court determines that a reward offered for "the arrest and conviction" of a criminal may be recovered by one who has killed the criminal in attempting to make the arrest. Although it is the general rule that the language of the offer should not be strictly construed, (See note to *Elkins* v. *Board of Commissioners,* 86 Kan. 305, 120 Pac. 542, in 46 L. R. A. (N. S.) 668) this would nevertheless seem to be carrying the doctrine of liberal construction to its limit.

SALES—WARRANTY TO PERSON OTHER THAN THE BUYER.—Plaintiff sold X a threshing machine, and took as security several notes given X by farmers as advances for threshing to be done with the machine. To induce defendant to make one of the notes, plaintiff's agent guaranteed him that the machine would do good work and was in good condition; relying upon this warranty defendant gave the note. When sued thereon, he answered that the machine was defective and could not be used, by reason of which he had suffered damage. *Held,* Defendant, although not a buyer, was not a stranger to the transaction, and can not only resist payment on the note, but can recover damages for the loss incurred by the breach of warranty. *Richardson Machinery Co.* v. *Brown* (Kan. 1915), 149 Pac. 434.

Usually only the buyer can recover for a breach of warranty, and third persons, strangers to the contract, cannot avail themselves of the warranty, *Talley* v. *Beaver,* 33 Tex. Civ. App. 675; *Carter* v. *Harden,* 78 Me. 528. Where the assignee of the vendee, or a subvendee, assumes the payment of the original purchase price in whole or in part, he may have advantage of the

warranty, *York Mfg. Co.* v. *Bonnell,* 24 Ind. App. 667; *Boyd* v. *Whitefield,* 19 Ark. 447; and in *Conestoga Cigar Co.* v. *Finke,* 144 Pa. St. 159, recovery was allowed a subvendee on a warranty of quality made by an inspector of tobacco to the vendee, because such was the general usage of the trade. But in these cases the warranty was made to the vendee, and recovery was allowed the subvendee because he was successor to the vendee's rights (except in the Pennsylvania case, where a custom was pleaded). In the instant case the warranty was not made to the vendee, but to a third person, who had an interest only because he secured the payment of part of the purchase price, and who was not a successor to the rights of the vendee in any way. Had the contract of warranty not been separable from the contract of sale, defendant's counter-claim could not have been allowed.

WATERS—EASEMENT OF UPPER PROPRIETOR—RIGHT OF LOWER OWNER TO REPEL SURFACE WATERS.—Plaintiff, the owner of land adjoining a highway, erected a dyke to prevent water from flowing from the highway on to his land. Defendant, a town controlling the highway, had the dyke cut down. In an action for damages brought against the defendant, *held,* that defendant, owner of the upper land, had no easement or servitude entitling it to discharge surface water on to the lower land. *Harvie* v. *Town of Caledonia* (Wis. 1915), 154 N. W. 383.

The question of the right to discharge surface water over the lower land is one concerning which there is much conflict of authority. There are first those decisions which follow the civil law rule. allowing the upper proprietor such a right. *Village of Trenton* v. *Rucker,* 162 Mich. 19, 127 N. W. 39; *Baltimore and S. P. Ry. Co.* v. *Hackett,* 87 Md. 224, 39 Atl. 510; *Sanguinetti* v. *Pock,* 136 Cal. 466, 69 Pac. 98; *Pinkstaff* v. *Steffy,* 216 Ill. 406, 75 N. E. 163; *Baker* v. *Town of Akron,* 145 Ia. 485, 122 N. W. 926; *Livingston v. McDonald,* 21 Ia. 160, 89 Am. Dec. 563; and *Foley* v. *Godchaux,* 48 La. Ann. 466, 19 So. 247. Secondly there are those decisions which follow the so-called common law rule that a land-owner, for the purpose of improving or cultivating his land, may raise it, or fill it in, even though the natural flow of surface water is thereby interrupted. *Barkley* v. *Wilcox,* 86 N. Y. 140, 40 Am. Rep. 519; *City of Paola* v. *Gorman,* 80 Kan. 702, 103 Pac. 83; *Chadeayne* v. *Robinson,* 55 Conn. 345. Thirdly, there are those decisions which hold that the water flowing from higher land is a common enemy and that the lower proprietor may, to prevent the flow of the water on to his land, erect any such barriers or obstructions as he may desire. This is really an extension of the so-called common law rule. *Bates* v. *Smith,* 100 Mass. 181; *Edwards* v. *Ry. Co.,* 39 S. C. 472, 18 S. E. 58; *Gross* v. *Lampasas,* 74 Tex. 195, 11 S. W. 1086; *Lessard* v. *Stram,* 62 Wis. 112; and *Bryant* v. *Merritt,* 71 Kan. 272, 80 Pac. 600 (dictum). It is this "common enemy" doctrine upon which the principal case is decided. Finally there are those decisions which say that the owner of the lower land may, by artificial means, prevent water from flowing on to his land when, considering all the circumstances, such an act would be reasonable. *Cox* v. *H. & St. J. Ry. Co.,* 174 Mo. 588, 74 S. W. 854; *Peterson* v. *Lindquist,* 106 Minn. 339, 119 N. W. 50; *Little Rock & Fort*